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Karen Jean Buck v. Robert Dean Robinson : Amicus Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS

KAREN JEAN BUCK,)	AMICUS BRIEF
)	
Appellee,)	
)	
vs.)	
)	
ROBERT DEAN ROBINSON,)	Case No. 20060760-CA
)	
Appellant.)	

UTAH JUDICIAL COUNCIL'S AMICUS CURIAE BRIEF

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Introduction

The Utah Judicial Council appreciates the opportunity to file this Amicus Brief to address the attack on the constitutionality of court commissioners. The Judicial Council will not get into a factual dispute about what occurred at the lower court. However, the Council would note that the facts provided in the Appellant's brief seem shy of the facts that might be necessary to support the arguments made in the brief.

Argument

The amicus curiae's primary interest in this matter is the attack on the constitutionality of the court commissioners' practices. In mounting a challenge, the Appellant has relied on Holm v. Smilowitz, 840 P.2d 157 (Utah App. 1992). Although Holm is perhaps a relevant case, the constitutional discussion in the Holm lead opinion was not accepted by a majority of the Court of Appeals panel members.¹ A discussion on the constitutionality of court commissioners should begin with the case of Salt Lake City

¹"Judge Billings and I concur fully in the court's opinion except in one limited respect. Our disagreement concerns the discussion of the non-delegability of core judicial functions as a matter of constitutional law. In our view, such discussion would be necessary only if the controlling statute and rule, by their terms, purported to vest commissioners with the power exercised by the commissioner in this case However, since the commissioner's actions were not even authorized by statute or rule, we see no need to opine about the constitutional implications of such actions." Holm, 840 P.2d at 169.

v. Ohms, 881 P.2d 844 (Utah 1994). The Appellants have not discussed Ohms, but this case provides the framework for the practice of court commissioners. Ohms addressed the authority of court commissioners in criminal cases. However, the Supreme Court also provided guidance on the authority of court commissioners in civil cases.

Mr. Ohms was convicted in the Third Circuit Court of a class B misdemeanor. Mr. Ohm's trial was presided over by a Third Circuit Court commissioner. At that time, the court commissioner statute, Utah Code Ann. § 78-3-31, stated:

Upon the informed consent of the defendant, the court commissioner may conduct a jury or non-jury misdemeanor trial in accordance with the law. Upon conviction, the commissioner may impose sentence and enter final judgment. The judgment entered by the commissioner shall be the final judgment of the court for all purposes including appeal.

Id. at 848. Prior to his trial, Mr. Ohms had signed a waiver and consent form in which he “consented to have his case tried and final judgment entered by a circuit court commissioner.” Id. at 846. Mr. Ohms appealed his conviction to the Utah Court of Appeals, which then certified the appeal to the Supreme Court. Mr. Ohms specifically challenged the constitutionality of § 78-3-31. Mr. Ohms alleged that it was an unconstitutional delegation of “ultimate judicial power to court commissioners in violation of Article VIII of the Utah Constitution.” Id.

The Utah Supreme Court agreed with Mr. Ohms and declared § 78-3-31 to be unconstitutional to the extent that it granted core judicial functions to non-judges. However, in making this determination, the Supreme Court recognized the valuable services provided by commissioners. The court discussed the appropriate role of commissioners in all court cases. The court stated:

As adjuncts of the court to which they are appointed, court commissioners are authorized to exercise certain functions to assist the court in the exercise of its core judicial powers. For example, Utah Code Ann. § 78-3-31(9) (1992) provides that the judicial council establish the types of orders and relief commissioners may recommend. Such provisions are constitutionally sound, since ultimate decision-making remains with the judge. . . . Court commissioners have provided a valuable service to the judiciary for over thirty years pursuant to constitutionally valid statutes. They have conducted fact-finding hearings, held pre-trial conferences, made recommendations to judges, and provided counseling and other worthwhile functions. However, over that thirty year period, commissioners were never allowed to perform ultimate or core judicial functions such as entering final orders and judgments or imposing sentence. In every case, commissioner actions led to recommendations which resulted in final review and signature by a judge. It was not until April 1990 that the current version of § 78-3-31 become effective, giving rise to Holm v. Smilowitz, 840 P.2d 157 (Utah App. 1992), and the present case.

Id. at 851, n.17

The Ohms court explained that the reason core judicial functions could not be delegated to non-judges is because “there are no provisions which subject them to the constitutional checks and balances imposed upon duly appointed judges of courts of record.” Id. at 851. Judges are more directly accountable to the public and therefore must be the ones to make final decisions concerning members of the public. The court explained that while Article VIII judges are the only ones that can exercise final decision-making authority, court commissioners “may perform many important functions in assistance to courts of record.” Id.

In State v. Thomas, 691 P.2d 299, 302 (Utah 1998), the Supreme Court explained that core judicial functions include:

(1) the power to hear and determine controversies between adverse parties and questions in litigation, (2) the authority to hear and determine justiciable controversies, (3) the authority to enforce any valid judgment, decree, or order, and (4) all powers that are necessary to protect the fundamental integrity of the judicial branch.

The court explained that “core judicial functions do not include functions that are generally designed to ‘assist’ courts, such as conducting fact-finding hearings, holding pre-trial conferences, and making recommendations to judges. In these instances, the commissioner’s actions are reviewable by a judge; thus, ultimate judicial power remains

with the judge.” Id. A court commissioner may thus assist a district court by conducting fact-finding hearings and making recommendations to a judge, as long as the judge has ultimate and final decision-making authority in the case. In short, a judge has authority to “hear and determine.” A commissioner has authority to hear and recommend.

In the lead opinion in Holm, Judge Russon stated that the commissioner had exceeded her authority by

- (1) deciding Holm’s motion for Utah to assume jurisdiction;
- (2) Informing Holm’s attorney that it was her order that the Ohio change of custody order be enforced that night;
- (3) ordering the police to enforce the undomesticated Ohio order;
- and (4) denying Holm’s attorney’s request for a hearing before the court with regard to the undomesticated Ohio order.

In each of the situations the commissioner had “decid[ed]”, order[ed], or “den[ied]” relief. The Holm lead opinion further stated that the commissioner’s acts could not be made valid by a subsequent “ratification” by a district court judge. Id. The district court judge had received a telephone call from the commissioner, in which the commissioner consulted the judge. However, the commissioner made the final decisions. The district court judge had also reviewed a motion for relief filed by Ms. Holm. However, the judge did not conduct a direct, independent review of the commissioner’s orders. The orders in Holm were never considered to be recommendations.

The problem in both Ohms and Holm was that the commissioners in each case issued final orders determining the rights of litigants. In Ohms, the commissioner issued a final judgment and sentence in a criminal case. In Holm, the commissioner issued final orders determining jurisdiction and the validity of a foreign judgment. In both Ohms and Holm, the orders were not subsequently reviewed and signed by a judge.¹ This is one of the critical factors in this case.

If a court commissioner makes a final determination, which determination is not a recommendation, then the court commissioner's actions are unconstitutional. The Utah Code and Utah court rules have been crafted with this understanding in mind, and the commissioner's actions in this case were consistent with statute, rule and case law.

Utah Code Ann. § 78-3-31(8) states that “the Judicial Council shall make uniform statewide rules defining the duties and authority of court commissioners for each level of court they serve.” The statute further states that “the rules shall at a minimum establish: (a) types of cases and matters commissioners may hear; (b) types of orders commissioners may recommend; (c) types of relief commissioners may recommend; and (d) procedure for timely judicial review of recommendations and orders made by court commissioners.”

¹The review and “ratification” in Holm did not treat the commissioner's orders as recommendations. Holm had filed a motion for relief from the commissioner's orders, and not an objection to the recommendation. The judge did not sign any orders.

Rule 6-401(2)(D) of the Utah Code of Judicial Administration states that a court commissioner may “make recommendations to the court regarding any issue, including a recommendation for entry of final judgment, in domestic relations or spouse abuse cases at any stage of the proceedings.” Rule 6-401(2)(F) authorizes a commissioner to “conduct evidentiary hearings,” in order to make such recommendations. Rule 7(g) of the Utah Rules of Civil Procedure states that “a recommendation of a court commissioner is the order of the court until modified by the court. A party may object to the recommendation by filing an objection in the same manner as filing a motion within ten days after the recommendation is made in open court.”

The statute and rule thus create a process by which a commissioner may hear and make recommendations in cohabitant abuse cases. The commissioner’s recommendation is subject to review by a district court judge. Under these authorities, a commissioner does not have final decision-making authority. An Article VIII judge is ultimately responsible for the orders that are issued out of a court. In practice, a judge reviews every protective order recommended by a commissioner and the judge is presumably accountable and responsible for the adequacy of the review that is conducted.²

²The Appellant has suggested that the judge “rubber stamped” the commissioner’s recommendation. However, the Appellant has not provided any facts to support this argument. In addition, the Petitioner has not addressed what the remedy would be for a

The case law, statute and rules thus permit court commissioners to conduct fact-finding hearings and recommend orders in cohabitant abuse cases. Based on the precedent in Ohms, the statute and rule are unconstitutional. The only issue is then whether the actions of the court commissioner exceeded the scope of authority delegated under statute and rule (as occurred in Holm).

According to the facts provided by the Appellant, the commissioner conducted a fact-finding hearing and signed a protective order at the end of the hearing. R. 28. The protective order was then reviewed by a district court judge. The district court judge signed the protective order on the same date that the protective order hearing was conducted. R. 35. The protective order signed by the commissioner and the findings made on record, served as a recommendation which was reviewed by the district court judge. In short, “the commissioner’s actions led to recommendations which resulted in final review and signature by a judge.” Ohms, 881 P.2d at 851, n. 17. The district court judge retained final authority to determine the controversy between the parties and to decide whether the court would issue a protective order, and what the terms of the order would be. The Appellant has not provided any facts to suggest otherwise.

“rubber stamp review.” Such an act would not necessarily affect the constitutionality of the commissioner’s practices.

In both Holm and Ohms, the court commissioners' actions did not serve as recommendations. A district court judge did not sign a final order in either case. The Appellant asks this court to "conclude that allowing court commissioners to conduct full evidentiary hearings is an unconstitutional delegation of a core judicial function." However, the Ohms court specifically stated that court commissioners may "conduct fact-finding hearings." The practice in this case is therefore constitutionally valid.

The Petitioner has raised a couple of other issues which will be briefly addressed, because the Appellee has apparently not filed a brief. The Petitioner claims that the commissioner was prohibited from conducting a hearing in this case because the parties contested the protective orders. The Appellant is misreading the rule in this regard.

Rule 6-401(2)(J) permits a commissioner to conduct settlement conferences in domestic relations cases and to certify any unsettled issues to the district court. This case is not a domestic relations case. It is a spouse abuse case. Rule 6-401(2)(D) clearly distinguishes between the two types of cases. The commissioner also did not conduct a settlement conference. Therefore, this provision did not apply.

Also, the purpose of an evidentiary hearing is to gather evidence and make findings on contested issues. The rule does not contemplate that the only role a

commissioner may play is to preside over a proceeding in which litigants only read a stipulation into the record.


The Appellant also claims that the court was required to hold a de novo hearing pursuant to Utah Code Ann. § 30-6-4.3. There is nothing in this statute that requires a de novo hearing. The statute states that a litigant may object to a commissioner's recommendation. The court must then hold a hearing within 20 days. The hearing would be held to specifically address the objection and not necessarily to hear anew the entire matter. In this case, the court held a hearing and reviewed the Appellant's objection to the proceeding, which objection was based on the constitutional authority of the commissioner. The Appellant did not object to the commissioner's findings or ultimate recommendations. There is nothing in the statute or rule that requires a de novo hearing on the contested issues between the parties, when a party files an objection. The statute only requires a hearing on the objection.

Conclusion

The Appellant has not made a sufficient argument against the constitutionality of court commissioner practices. The Appellant has not addressed the Ohms case, which tacitly approved the court commissioner practice of conducting fact-finding hearings and making recommendations in civil cases. The commissioner followed that practice in this

case. It was the district court judge who ultimately signed and issued the final protective order. This court should reject the Appellant's constitutional arguments.

DATED this 28th day of March, 2007.



Brent Johnson, Attorney for
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MAILING CERTIFICATE

This is to certify that a true and correct copy of the foregoing Amicus Curiae Brief was mailed first class, postage prepaid and addressed as follows on this 28th day of March, 2007.

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